Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR(CG)

MISC.APPEAL NO.1014/2006

(APPEAL UNDER ORDER XLIII RULE 1(r) OF CODE OF CIVIL PROCEDURE)

APPELLANTS
PLAINTIFFS

1. Ravi Relwani, S/o Late Trilokchand Relwani aged about 21 years, Profession - Business

2. Smt. Asha Devi Relwani Wife of Late Trilokchand Relwani Aged about 39 Years, Profession - Housewife

Both are R/o Village Bilha, P.S.- Bilha P.S. & Tahsil Bilha, District – Bilaspur (CG)

P.R. No. 3125/06
Presented by Shri N.P. Kashyap
dated 11.12.06

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Versus

RESPONDENTS
DEFENDANTS

1. Santosh Kaushik S/o Baburam Kaushik, Aged about 37 years Profession – Teacheer, R/o Chakar-bhata, Tahsil- Bilha, District- Bilaspur (CG)
   And
   Om Nagar Jarhabhatha, Bilaspur Tahsil & District Bilaspur (CG)

2. State of Chhattsitharh Through- Collector, Bilaspur (CG).

(5)

(2)

(APPEAL UNDER ORDER XLIII RULE 1(r) OF CODE OF CIVIL PROCEDURE)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(34)

मामला क्रमांक M.A. No. 1014/ **सन् 2006**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	13-11-2006 Shri Vishnu Koshta, learned counsel for the appellants. Heard on admission. This Miscellaneous Appeal is directed against the order dated 02-09-2006 passed by the IVth Additional District Judge, District-Bilaspur in Civil Suit No.14-A/2006 whereby the application under Order-39 Rule-1 & 2 of C.P.C. for grant of temporary injunction restraining the defendant from alienating suit land to any other person was dismissed. It is not in dispute that the defendant No.1 Santosh Kaushik had executed an agreement dated 04-03-2006 to sell agriculture land Khasara Number 628/2, Area-2.5 Acres, situated at Village-Amsena Patwari Halka Number-22, Revenue Circle- Sakri, Tahsil-Takhatpur, District-Bilaspur to the plaintiff for consideration of Rs.9 Lakh. It is also not disputed that an essential condition of the agreement to sell the agriculture land was that the plaintiffs shall also pay a sum of Rs. 1 Lakh on 04-04-2006 and the remaining consideration shall be paid within 3 months at the time of Registry. The plaintiffs/appellants filed a suit for specific performance of contract which is Civil Suit Number-14-A/2006. An application under Order-39 Rule-1 & 2 of C.P.C. was filed by the plaintiffs on the ground that the defendant Santosh Kaushik was trying to alienate the suit land to some other person. Defendant Santosh Kaushik resisted the application and contended that as per terms of the agreement the plaintiffs did not pay a sum of	

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(35)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Rs.1 Lakh to the defendant on 04-04-2006 due to which earnest money of Rs. 1 Lakh was returned by him to the plaintiff and the contract was rescinded. It was also contended that the agreement was executed between the defendant and one Satish Relvani who had got the agreement executed in the name of the plaintiffs. It was also contended that the defendant was not alienating the suit land to any other person.

The learned IVth Additional District Judge, Bilaspur held that the plaintiffs have failed to establish a prima facie case and to show that they were ready and willing to perform their part of the contract since there was nothing to show that the plaintiffs had deposited a sum of Rs. 1 Lakh with the defendant on 04-04-2006 as per terms of the agreement. It also took into consideration the fact that as per terms of the agreement the plaintiffs had agreed to sell agriculture suit land to any other person in whose name the defendant would want to get the sale deed executed. It also took note of the fact that the plaintiffs, in its notice sent to the defendant through counsel, did not mention that a sum of Rs. 1 Lakh was paid to the defendant on 04-04-2006 in terms of the agreement. On these premises, there being no prima facie case in favour of the plaintiffs the application under Order-39 Rule-1 & 2 of C.P.C. was dismissed.

Having heard learned counsel for the appellants/plaintiffs, I am of the considered opinion that this Miscellaneous Appeal deserves to be dismissed at the stage of admission. In a suit for specific performance of contract, the burden is on the plaintiffs to show that they were always

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

ready and willing to perform their part of the contract and had complied with the essential terms of the contract. The plaintiffs cannot succeed on the strength of latches on the part of the defendant. It is not in dispute that the plaintiffs had failed to deposit a sum of Rs. 1 Lakh on 04-04-2006 which was an essential condition of the agreement. Shri Vishnu Koshta, learned counsel for the appellants/plaintiffs does not dispute that this sum has not been paid so far. The condition stipulated in the agreement that the defendant would be liable to execute the sale deed in favour of any person desired by the plaintiffs also renders the agreement vague.

In this view of the matter, the finding recorded by the learned IVth Additional District Judge, Bilaspur that absence of a prima facie in favour of the plaintiffs disentitles the plaintiffs to a temporary injunction in their favour cannot be faulted with. The impugned order is well merited and does not call for any interference in this Miscellaneous Appeal No.1014/2006 which being devoid of merit is dismissed at the stage of admission.

In view of above, M.(C).P.No.1862/2006 for grant of stay also stands disposed of.

Certified copy as per rules.

Sd/-
Dilip Raosaheb Deshmukh
Judge

P.T.O.